

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

David J. Kral,

Civil No. 08-560 (DWF/FLN)

Petitioner,

v.

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

United States Marshal Services  
Minneapolis, Minnesota,

Respondent.

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David J. Kral, *Pro Se*, Petitioner.

Jeffrey S. Paulsen, Assistant United States Attorney, United States Attorney's Office,  
counsel for Respondent.

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This matter is before the Court upon Petitioner's objections to Magistrate Judge Franklin L. Noel's Report and Recommendation dated April 23, 2008, recommending that: (1) Petitioner's motion to amend be denied; (2) Petitioner's motion for a "full merit ruling" be denied; and (3) this action be dismissed without prejudice.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections. As explained in the Report and Recommendation,

it is apparent that Petitioner is challenging, through a habeas corpus petition, the conditions of his confinement. A habeas corpus action, however, is not the proper mechanism for such a challenge. *Heck v. Humphrey*, 512 U.S. 477, 481 (1994); *see also Otey v. Hopkins*, 5 F.3d 1125, 1130-31 (8th Cir. 1993). Having failed to file an appropriate civil action, Petitioner's claim is dismissed without prejudice.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

**ORDER**

1. Petitioner David J. Kral's objections (Doc. No. 6) to Magistrate Judge Franklin L. Noel's Report and Recommendation dated April 23, 2008, are **DENIED**.
2. Magistrate Judge Franklin L. Noel's Report and Recommendation dated April 23, 2008 (Doc. No. 5) is **ADOPTED**.
3. Petitioner's motion to amend (Doc. No. 3) is **DENIED**.
4. Petitioner's motion for a "full merit ruling" (Doc. No. 4) is **DENIED**.
5. This action is **DISMISSED WITHOUT PREJUDICE**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: May 27, 2008

s/Donovan W. Frank  
DONOVAN W. FRANK  
Judge of United States District Court